



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT SEPTEMBER 28, 2016 MEETING MINUTES

A regular meeting of the Merrimack Zoning Board of Adjustment was conducted on Wednesday, September 28, 2016 at 7:00 p.m. in the Matthew Thornton Room.

Chairman Patrick Dwyer presided:

Members of the Board Present: Fran L'Heureux, Vice Chair
Leonard Worster, Alternate

Members of the Board Absent: Anthony Pellegrino
Lynn Christensen
Richard Conescu

Also in Attendance: Robert Price, Assistant Planner

1. CALL TO ORDER

Chairman Dwyer led the Pledge of Allegiance. Fran L'Heureux read the Preamble. Chairman Dwyer swore in members of the public who would be testifying.

2. ROLL CALL

Chairman Dwyer appointed Leonard Worster to serve as a voting member in the absence of Lynn Christensen.

The next meeting of the Zoning Board of Adjustment will be conducted on October 26, 2016.

Chairman Dwyer informed those in attendance, with only three members of the Board present, in order for a petition to be granted, a unanimous vote would be required. As a result, Petitioners have the option to postpone consideration of their case until the Board's next meeting.

4. **Chad Brannon, PE of Fieldstone Land Consultants, PLLC. (petitioner) and Brett W. Vaughn Revocable Trust (owner)** - Variances under Section 3.02 of the Zoning Ordinance to permit an 11-lot subdivision with a lot with an area of 89,733 s.f. whereas 100,000 s.f. is required, a lot with a frontage of 107.80 feet whereas 250 feet is required, a lot with a frontage of 75 feet whereas 250 feet is required and a lot 8 with a frontage 89.20 feet whereas 250 feet is required. The parcel is located at 123 Wilson Hill Road in the R-1 (Residential) District by Zoning Map. Tax Map 4A, Lot 023. Case # 2016-32, 33, 34, and 35.

Gregory Michael, Bernstein Shur, Sawyer & Nelson, P.A., stated the Petitioner wished to postpone. The Board announced the postponement of this hearing until October 26, 2016.

3. **Peter and Linda L'Ecuyer (petitioners/owners)** - Variances under Section 2.02.1.A.4 (E)* and (F)* of the Zoning Ordinance to permit an 1,104 s.f. ADU (Accessory Dwelling Unit) whereas 1,000 s.f. is allowed and for a 192 s.f. external connection to the ADU whereas an internal connection is required. The parcel is located at 7 Paige Drive in the R (Residential) District. Tax Map 7D, Lot 043. Case # 2016-30 and 31. (*Sections from posted Zoning Amendments currently before the Town Council for final adoption.)

Mr. Peter L'Ecuyer informed the Board he and his wife were applying for a variance in order to build an ADU to expand their existing home to provide a space to age in place, and continue to live with extended family in Town.

Mr. Peter L'Ecuyer read the statutory criteria into the record:

Section 2.02.1.A.4 (E) and (F)

1. Granting the variance to build a 1,104 square foot attached Accessory Dwelling Unit (ADU) with an external connector (breezeway) to the Primary Dwelling Unit (PDU) would not be contrary to the public interest because it would pose no threat to the public safety, health, or welfare. As there would be no encroachment on any setback, there would be no impediment to emergency or public works vehicles. Further, there would be no negative impact on surrounding property values, as the ADU would preserve the essential nature of the multigenerational home as a single-family structure, and thus would not detract from the character of the neighborhood.
2. The spirit of the ordinance is observed because the proposed ADU would not change the essential nature of the dwelling as a single-family home. Specifically, the ADU is in the spirit of the ordinance in that:
 - It would be an addition to the existing single-family dwelling in a residential area
 - It would present a cohesive exterior that would not cause the dwelling to look like a duplex
 - It would be functionally dependent on the PDU for essential amenities such as utilities, carport and driveway
 - It would contain one bedroom
 - It would be within the required setbacks
 - The property owner would reside in the ADU dwelling

Neither the external attachment of the ADU nor the additional square footage would alter the inherent character of the home as a single-family dwelling. Further, the spirit of the ordinance would be observed by the tasteful design and proper choice of materials used to maintain the appearance of this single-family residential structure.

3. Granting the variance will achieve substantial justice because the external connection of a breezeway is the only way to connect the ADU to the existing home due to the specific configuration of the property and existing structure. The location of the septic system and an existing in ground pool preclude situating the ADU in the back yard. The placement of driveway, carport, and utilities prohibit the placement of an internal connection to the sides of the existing structure. This external connection is the only feasible way to extend the primary dwelling unit to accommodate the ADU.

Granting the additional square footage would do substantial justice because it allows for an interior access stairway to the basement of the ADU, which would not be accessible from the PDU due to the placement of the existing heating system components (boiler and hot water heater). This interior basement access would facilitate any future required maintenance of the ADU.

The additional square footage also allows for application of universal design principles to provide for possible future required mobility assistance (such as walkers, rollators, and wheelchairs) as we age in place. Recent personal experience with caring for our parents as they aged has made us aware of the value of planning for our own future.

The addition of the ADU would allow us to live in close proximity to our daughter and her family as we age. Our family has lived at 7 Paige Drive for 22 years. Our children grew up here, and our grandchildren are growing up here. Granting the variance for an external connection and additional

square footage would allow us to continue to live with them with greater ease and independence as we age in place.

Chairman Dwyer questioned where the addition would be placed, and was told the existing fence would have to be removed to allow for the construction. The current plan is to leave the chimney in place. The breezeway would exist as a laundry room space, and would be built with the chimney enclosed in that space.

4. The values of the surrounding properties would not be diminished. Both the external connection (breezeway) and the additional square footage will be tastefully built to match the existing home in design and materials making for an aesthetically pleasing single-family residential structure. The external connector (breezeway) is a traditional design element frequently used to connect two living spaces of a single-family Cape style home such as ours, and is common in our neighborhood and community. The additional square footage would be built in the back of the ADU, hidden from the street by the breezeway, and would not encroach on any setbacks. Both would enhance the existing home and thus would have no negative effects on adjacent properties, and would increase the values of surrounding homes.

5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

The general public purpose of the ordinance provisions for the attached ADU to be internally connected to the PDU and having a maximum size of 1,000 square feet do not take into account the specific unique conditions of our property. Conforming to these provisions would cause an unnecessary hardship because the locations of the septic system, an in ground pool and patio, the existing fireplace and chimney, external basement access, driveway, carport, and placement of utility hookups preclude an internal connection to the PDU.

Without the variance for the additional square footage, it would not be possible to provide interior access to the basement of the ADU due to space limitations. This would cause unnecessary hardship in accessing the basement of the ADU in order to perform required maintenance to the plumbing, heating and electrical systems of the dwelling. It will also preclude application of universal design principals in the ADU, which would help address future mobility issues as we age in place.

Vice Chairman L'Heureux questioned the total square footage of the home as it currently exists, and was informed it is 1,854 square feet.

2. The proposed use is a reasonable one.

An external connection will allow the owners to build the ADU in the only possible place on the property. Specific conditions of the primary dwelling unit would prohibit an internal connection of an ADU. Without the use of an external connection, it would not be possible to build the ADU.

The proposal for the additional square footage is reasonable because it allows enough space for an interior access to the basement of the ADU. This would allow any required maintenance to be made safely and without unnecessary hardship. It also provides the necessary space for incorporating universal design elements in the ADU. This would allow enough space for the multigenerational family to live with independence, providing for current and anticipated future needs.

When asked, Ms. Linda L'Ecuyer stated the door that opens into the laundry room from the existing structure, is located in the living/family room. The ADU will include a basement, which cannot be connected to the existing basement because of the placement of the existing boiler, heating system, and hot water heating system. The square footage of the laundry area is 192 s.f.

Chairman Dwyer questioned why the direction taken is that of an ADU as opposed to an addition noting with an addition, there would be no need to appear before the Board. Mr. Price noted the external connection, and the definition of State law that would identify it as an ADU.

Vice Chairman L'Heureux questioned if staff had any comments to provide. Mr. Price stated staff had no additional comments or concerns. With changes in State law and proposed changes to the Town's Ordinance, 1,000 s.f. is allowed, but an internal connection is required. The Petitioner is seeking variances to allow for a 1,104 s.f. ADU and a 192 s.f. external connection. It was noted because the proposed changes to the Ordinance have been posted for Public Hearing, they are legally enforceable and in effect.

- B. If the criteria in subparagraph (A) are not established, explain how an unnecessary hardship will be deemed to exist if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.

Not applicable as the criteria in subparagraph (A) have been established.

Chairman Dwyer opened the Public Hearing at 7:25 p.m.

Testimony in Favor

Chairman Dwyer read into the record a letter received from Brian & Pauline Landrigan, 4 Paige Drive:

"Pauline and I have lived with our family at 4 Paige Drive since 1986. We have known Pete and Linda L'Ecuyer the entire time they have lived at 7 Paige Drive, and consider them dear friends. Our daughters attended school together with the L'Ecuyer children, participated in theatre together, and we have been proud to have the family as neighbors all of these years. We understand Pete and Linda are applying for a Variance to build an addition to their house, and we support them 100%. We have welcomed their Daughter and Son-in-Law, and their children into the household, and it is great to see they will all remain together. They are model neighbors, and if there is anything we can do to assist the Town Government please let us know."

Chairman Dwyer read into the record an email received from Jeffrey & Kirsten Boucher, 5 Paige Drive:

"This email is to inform the Town of Merrimack that we, Jeffrey & Kirsten Boucher, residing at 5 Paige Drive and as abutters to 7 Paige Drive are aware of the requested Zoning Variance pertaining to an added structure and entry at 7 Paige Drive, and are in support of said Variance."

Testimony in Opposition - None

Chairman Dwyer declared the Public Hearing closed at 7:26 p.m.

Member Worster noted the only exterior door leads into the house. He was uncertain he would refer to it as an external connection. Mr. Price suggested an internal connection would connect with the existing basement. The breezeway is necessary to connect to a separate area.

**MOTION BY MEMBER L'HEUREUX TO GRANT THE VARIANCES UNDER SECTION 2.02.1.A.4 (E) AND (F) OF THE ZONING ORDINANCE TO PERMIT A 1,104 S.F. ADU WHEREAS 1,000 S.F. MAXIMUM IS ALLOWED AND FOR A 192 S.F. EXTERNAL CONNECTION TO THE ADU WHEREAS AN INTERNAL CONNECTION IS REQUIRED. THE PARCEL IS LOCATED AT 7 PAIGE DRIVE IN THE R (RESIDENTIAL) DISTRICT. TAX MAP 7D, LOT 043. CASE # 2016-30 AND 31.
MOTION SECONDED BY MEMBER WORSTER**

ON THE QUESTION

Member Worster noted the language states 1,104 s.f. ADU including the laundry room. He questioned why the Board was discussing the 192 s.f. external connection. Mr. Price responded, when looking at the Variance requests separately, if it were an internally connected ADU that would be allowed. Because it is

externally connected, it differs from what the Zoning Ordinance states, which dictates the need for a Variance for that. The second Variance is for the actual square footage.

MOTION CARRIED

3-0-0

5. DISCUSSION/POSSIBLE ACTION REGARDING OTHER ITEMS OF CONCERN

Chairman Dwyer noted the draft meeting schedule provided.

MOTION BY MEMBER WORSTER TO ACCEPT THE PROSED 2017 MEETING SCHEDULE AS PRINTED

MOTION SECONDED BY MEMBER L'HEUREUX

MOTION CARRIED

3-0-0

Mr. Price remarked, at its last meeting, the Board discussed the idea of a member recusing themselves if they happen to arrive late to a case. As requested, staff researched the matter. The Community Development Director provided a written response, in which he states he does not recommend the Board require a member to recuse him/herself in such an instance based on how the RSA is written. You cannot legally compel a member to recuse him/herself. It has to be voluntary.

6. APPROVAL OF MINUTES

Merrimack Zoning Board of Adjustment August 31, 2016

The Board agreed to postpone the approval of the August 31, 2016 minutes until the October 26, 2016 meeting.

7. ADJOURNMENT

MOTION BY MEMBER L'HEUREUX TO ADJOURN

MOTION SECONDED BY MEMBER WORSTER

MOTION CARRIED

3-0-0

The September 28, 2016 meeting of the Merrimack Zoning Board of Adjustment was adjourned at 7:38 p.m.